

AMERICAN ARBITRATION ASSOCIATION  
COMMERCIAL DIVISION

-----X Case No: 01-19-0004-6511  
STRAIGHT A COMPANY, LP,

Claimant,

-against-

LA APPAREL, INC.,

Respondent.

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**CLAIMANT STRAIGHT A COMPANY, LP'S POST-HEARING MEMORANDUM OF LAW**

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Respectfully Submitted,  
WARSHAW BURSTEIN, LLP  
*Attorneys for Claimant*  
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With respect to 2019, LA Apparel, through both Mr. Wattenberg and LA Apparel's attorney, Stuart Serota, Esq., also improperly objected to Concorde's 2019 internal financial statements which were presented to Mr. Wattenberg on June 28, 2020 (Exhibit C-4) and "instructed" Eric Davis of Ginader Jones & Co., LLP, Concorde's independent accountants, not to issue the 2019 Concorde Review Report, which was otherwise ready. *See* Exhibits C-5, C-23, C-24, C-25. *See also*, Tr., at pp. 90:4-9. Based on receipt of the letter Attorney Serota sent on behalf of Respondent, Ginader Jones has not issued its Review Report with respect to Concorde's 2019 financial statements pending the outcome of this arbitration.<sup>3</sup> Again, by obstructing the process proscribed in Section 9.04, and refusing to authorize distributions as set forth above, Respondent has breached the Operating Agreement and the implied covenant of good faith and fair dealing.

**C. Claimant Has Been Damaged by Respondent's Breach of the Operating Agreement**

By unilaterally preventing Concorde from distributing end-of-year gross operating profit to Straight A, Straight A has been damaged, in the first instance, in the amount it would have otherwise received: \$393,988.38 for the fiscal year 2018, and \$351,145.14 for the 2019 fiscal year.

Eric Davis testified that Ginader calculated Concorde's 2018 fiscal year distributions based upon a review of Concorde's financial records and the Operating Agreement. *See* Tr., at pp. 263-64:16-17, referring to Exhibit C-6. Mr. Davis' calculations are annexed as part of Ex. C-6, specifically the last 2 pages, which pages follow the first attachment (draft financial statements).

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<sup>3</sup> Of course, Claimant Straight A initiated this arbitration on December 31, 2019, among other things, seeking an Order directing Respondent to authorize distributions of Concorde's gross operating profits as same are determined in accordance with Section 9.03 of the Operating Agreement for fiscal years 2018, 2019, and all future fiscal years.

For Your convenience, Mr. Davis' 2018 calculations are reproduced in substance herein:

<b>Calculation of Front End Bonus</b>			
<b>Additional Back End Bonus</b>			
			Per Agreement
NET SALES			16,442,602.99
Cost of Goods Sold			12,455,061.03
GROSS PROFIT		<b>A</b>	3,987,541.96
Royalties			416,866.14
Corporate "Shared" Expenses			321,246.00
Total Expenses		<b>B</b>	738,112.14
Distributions Before Profit Reserve & Comm.		<b>A-B</b>	3,249,429.82
Allocations:			
9.03 (i)	Profit Reserve (5% of Net Sales)		822,130.15
9.03 (ii)	To Straight A/Astro (6% of Net Sales)	<b>C</b>	986,556.18
9.03 (iii)	To LA/Belissimo (\$546,000)	<b>D</b>	546,000.00
9.03 (iv)	To Straight A/Astro (2% of Net Sales)	<b>C</b>	328,852.06
9.03(v)	To Straight A/Astro (10% of Balance)	<b>C</b>	56,589.14
9.03(v)	To LA/Belissimo (90% of Balance)	<b>D</b>	509,302.29
			3,249,429.82
To Straight A/Astro before Profit Reserve		<b>Sigma C</b>	1,371,997.38
Paid to Date			(978,009.00)
Additional Back End Management Income			393,988.38
To LA Apparel/Belissimo before Profit Reserve		<b>Sigma D</b>	1,055,302.29
Paid to Date			(841,662.32)
Additional Front End Management Income			213,639.97

As shown in Exhibit C-6 and as Mr. Davis testified, Respondent's improper failure and refusal to authorize the distribution of Concorde's profits for the 2018 fiscal year has damaged Claimant in the amount of \$393,988.38.

Mr. Alperin testified that Straight A was entitled to approximately \$351,000 in distributions for fiscal year 2019, exclusive of Straight A's uncontested profit reserve. *See Tr.*, at

p. 453:18-22. Exhibit C-4 sets forth the calculation of Claimant's damages with respect to fiscal year 2019, reproduced in substance herein, and compared to Eric Davis' 2018 calculations:

<b><u>CONCORDE APPAREL COMPANY LLC</u></b>				
<b>12/31/19</b>				
<b>Calculation of Front End Bonus</b>				
<b>Additional Back End Bonus</b>				
<b>Per Operating Agreement</b>				
			<b>2019</b>	<b>2018</b>
NET SALES			17,201,791.00	16,442,602.99
Cost of Goods Sold			13,319,496.00	12,455,061.03
GROSS PROFIT		<b>A</b>	3,882,295.00	3,987,541.96
Royalties			625,863.00	416,866.14
Sales Commissions			19,000.81	-
Corporate "Shared" Expenses			403,106.00	321,246.00
Total Expenses (Excluding FE Commissions)		<b>B</b>	1,047,970.00	738,112.14
Distributions Before Profit Reserve & Comm.		<b>A-B</b>	2,853,326.00	3,249,429.82
Allocations:				
9.03 (i)	<b>Profit Reserve (5% of Net Sales)</b>		<b>860,089.55</b>	822,130.15
9.03 (ii)	To Straight A/Astro (6% of Net Sales)	<b>C</b>	1,032,107.46	986,556.18
9.03 (iii)	To LA/Belissimo (\$546,000)	<b>D</b>	546,000.00	546,000.00
9.03 (iv)	To Straight A/Astro (2% of Net Sales)	<b>C</b>	344,035.82	328,852.06
9.03 (v)	To Straight A/Astro (10% of Balance)	<b>C</b>	7,109.32	56,589.14
9.03 (v)	To LA/Belissimo (90% of Balance)	<b>D</b>	63,983.85	509,302.29
			2,853,326.00	3,249,429.82
To Straight A/Astro before Profit Reserve		<b>Sigma C</b>	1,383,252.60	1,371,997.38
Paid to Date			(1,032,107.46)	(978,009.00)
Additional Back End Management Income			<b>351,145.14</b>	<b>393,988.38</b>
To LA Apparel/Belissimo before Profit Reserve		<b>Sigma D</b>	609,983.85	1,055,302.29
Paid to Date			(863,589.00)	(841,662.32)
Additional Front End Management Income			<b>(253,605.12)</b>	<b>213,639.97</b>

Thus, calculating Concorde's fiscal year 2019 distributions by following the same method utilized by Eric Davis when he calculated Concorde's 2018 distributions, Claimant has been damaged in the amount of \$351,145.14.

Mr. Alperin testified that Eric Davis may have slightly adjusted Concorde's fiscal year 2019 financial records after the June 28, 2020 transmission of Exhibit C-4, however, any such adjustment was within ten thousand dollars (\$10,000.00) of the \$351,145.14 due and owing to Straight A for the 2019 fiscal year. *See* Tr., at pp. 443-44:20-15.

As such, based on Respondent's material breach of the Operating Agreement, Claimant has been damaged in the amounts of \$393,988.38 for the 2018 fiscal year, and in the amount of \$351,145.14 for the 2019 fiscal year.

In addition, Claimant's Statement of Claim respectfully requests pre-award interest on the fiscal year 2018 delayed distribution from April 1, 2019, which totals an additional \$53,932.58 through December 7, 2020, plus \$87.55 per day thereafter, on top of the \$393,988.38 due and owing to Straight A for the 2018 fiscal year<sup>4</sup> and the costs of this arbitration, which costs are not yet final but as of the last AAA statement issued on December 2, 2020, were \$35,635.00.

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<sup>4</sup> Delaware Prejudgment Interest is the federal discount interest rate as of the time from when interest is due, plus 5%. *Smith v. Nu-West Indus.* 2001 Del Ch. LEXIS 8 at \* 1-2 (Del. Ch. Jan. 12, 2001) citing 6 Del. C. Section 2301(a). The Federal Discount Interest Rate on April 1, 2019 was 3.0%.